

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DERRICK MOULTRIE,

Petitioner,

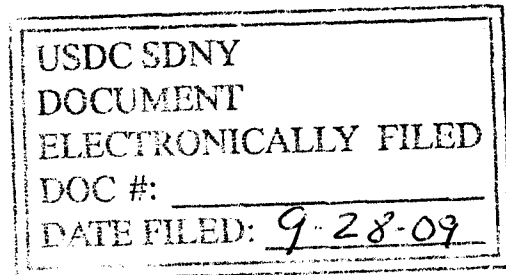
-v-

LUIS R. MARSHALL, Superintendent,
Wallkill Correctional Facility,

Respondent.
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06 Civ. 5419 (JSR)

ORDER



JED S. RAKOFF, U.S.D.J.

On June 3, 2009, the Honorable Henry Pitman, United States Magistrate Judge, issued a Report and Recommendation in the above-captioned matter recommending the denial of petitioner's petition filed pursuant to 28 U.S.C. § 2254. Subsequently, on August 7, 2009,¹ petitioner submitted objections to the Report and Recommendation. Accordingly, the Court has reviewed the petition and the underlying record de novo.

Having done so, the Court finds itself in complete agreement with Magistrate Judge Pitman's Report and Recommendation and hereby adopts its reasoning by reference. Accordingly, the Court dismisses the petition, with prejudice. In addition, because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. Moreover, the Court certifies that any appeal from this Order would not be taken in good faith, as petitioner's claim lacks any arguable basis in law or fact, and therefore permission to proceed in forma pauperis

¹By order dated July 29, 2009, the Court granted leave for petitioner to file objections no later than August 18, 2009.

is also denied. See 28 U.S.C. § 1915(a)(3); see also Seimon v. Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir. 2005).

Clerk to enter judgment.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
September ~~26~~, 2009